

There is no dispute concerning the compensability of claimant's injury. In its brief, respondent and Travelers argue that whether or not claimant's injury arose out of and in the course of her employment is an issue but, as the Appeals Board views the arguments presented, the issue is actually which of respondent's insurance carriers should pay for the benefits ordered. The Administrative Law Judge ordered Travelers to pay because of claimant's

argument that she suffered a permanent worsening of her condition after Wausau's coverage ended and during Travelers' period of coverage. Again, neither Travelers nor Wausau argues that claimant's injury is not compensable.

K.S.A. 1997 Supp. 44-551(b)(2)(A) limits the jurisdiction of the Appeals Board to review preliminary hearing orders only in cases where one of the parties has alleged the Administrative Law Judge exceeded his or her jurisdiction. This jurisdiction includes the specific issues identified in K.S.A. 1997 Supp. 44-534a. A contention that the Administrative Law Judge has erred in her finding that the evidence shows a continuing series of repetitive injuries or mini-traumas as opposed to a single accident is not an argument the Appeals Board has the jurisdiction to consider on an appeal from an order entered pursuant to K.S.A. 1997 Supp. 44-534a.

The arguments pertain to what date of accident should control for purposes of determining which insurance carrier is liable. This does not give rise to a disputed issue of whether claimant's injury occurred as a result of an accident which arose out of and in the course of claimant's employment with respondent. Whether claimant's date of accident is found to be before or after January 1, 1998, does not alter the fact that the injury is the result of claimant's employment with respondent. That fact appears to be undisputed.

The Appeals Board likewise finds it does not have jurisdiction of this appeal from a preliminary hearing order because respondent and Travelers' arguments also fail to raise a jurisdictional defense. The Appeals Board has previously held that the certain types of defenses contemplated by K.S.A. 44-534a(a)(2), are defenses which go to the compensability of the claim. See Cockerham v. Nichols Fluid Service, Docket No. 201,867 (February 1996). As indicated above, the issues raised by this appeal do not fall within that category.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review at this juncture of the proceedings the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes, dated April 10, 1998, and that this appeal should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS  
Garry W. Lassman, Pittsburg, KS  
Kenneth J. Hursh, Overland Park, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director